FILE COPY

Supreme Court, U. S.
FILED
MAR 22 1973
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972
No. 72-959

JOHN H. YOUNG,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Appellee.

---

PETITION FOR REHEARING
PURSUANT TO RULE 58(2)
RULES OF THE SUPREME COURT
OF THE UNITED STATES

---

HOWARD E. BECKLER
6922 Hollywood Blvd.
Suite 201
Hollywood, CA 90028
(213) 465-1191
Attorney for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-959

JOHN H. YOUNG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

# PETITION FOR REHEARING PURSUANT TO RULE 58(2) RULES OF THE SUPREME COURT OF THE UNITED STATES

---

HOWARD E. BECKLER

6922 Hollywood Blvd.
Suite 201
Hollywood, CA 90028
(213) 465-1191

Attorney for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-959

JOHN H. YOUNG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

PETITION FOR REHEARING
PURSUANT TO RULE 58(2)
RULES OF THE SUPREME COURT
OF THE UNITED STATES

---

I

Reascn For Rehearing

---

The petition for writ of certiorari herein was filed January 5, 1973. The government's memorandum in opposition was received by counsel February 14, 1973. Said memorandum necessitated response and

the same was filed on behalf of petitioner March 9, 1973. The determination of this Court denying the petition for writ of certiorari was entered March 5, 1973. It is respectfully urged that this matter now be reheard so that petitioner's response to the government's opposition memorandum may be considered. A statement of said response is set forth below.

## II

## Petitioner's Response To Memorandum Of Government In Opposition To Petition For Writ of Certiorari

---

The Government's opposition memorandum submitted in this case fails entirely to direct itself to the issues raised in petitioner's petition for writ of certiorari. Instead, the Government contends that no error occurred in the proceedings below because of the failure of petitioner's trial counsel to move for a trial

continuance on learning that a co-defendant was to testify for the Government, although such continuance "might have been proper to allow petitioner's counsel to deal with this development." (Opp. Mem. pp. 2-3).

Such a motion, however, would have been an obvious exercise in futility. The day preceding the trial date petitioner sought to substitute counsel and obtain a trial continuance. The trial court remarked as follows in denying this motion:

> "THE COURT: Well, counsel, I heard, and looking at my notes, we heard the motion to suppress some weeks ago. As I recall, there were four counsel involved, Mr. St. Sure, Mr. Hunt, and who were the other two? Mr. Sevilla, and Mr. Zernich, and at the conclusion of the motion to suppress we spent sometime getting a trial date that was satisfactory to all four counsel. Mr. St. Sure adequately cross examined and adequately represented your proposed client, Mr. Young. The Court set aside Tuesday, Wednesday, Thursday, and Friday of this week. That

would be four days, from the 16th through the 19th of trial of this case, it being represented to the Court that the case would probably get to the jury the third or fourth day. To grant your motion would leave this court dark for four days. We have a number of defendants in custody wanting an early trial. I can't get them to trial during this four-day period. Continuing the case, when we could hear it, and get four counsel to agree on a date, is highly problematical, with the Christmas season coming up, and I see no cause, based upon your statement, counsel, I see no reason to delay the trial.

If you wish to sit in with Mr. St. Sure, it's a very simple case, looking over my notes. It's not complicated. It's a question of fact. The law was gone into. You are welcome to sit through the case, be lead counsel, or whatever your client desires, but the jury has been called, and we will proceed

to trial at 9:00 a.m. tomorrow." (R.T. p. 205, line 23 to p. 206, line 22).

On the trial date the disclosure was first made of the Government's intended use of a co-defendant. Upon such disclosure petitioner's counsel sought to ten minute delay in proceedings to consider a possible plea disposition of the case. The trial court refused to consider such stating:

"I have all the jurors out here. We are going to trial. If you want to plea [sic] to all counts, we will take it." (R.T. p. 220, lines 19-20).

The trial court, of course, was fully aware at this time of the new development in the case involving the Government's use of the co-defendant's testimony against the remaining parties. Nonetheless, the trial court did not wish even to delay the trial of the case to consider a plea disposition, and in light of its remarks the preceding day as quoted above it was manifest that a motion for trial continuance would have

been summarily denied.

The Government cannot seriously contend, therefore, that the lack of such motion should now serve to deprive petitioner of his rights herein. It is respectfully submitted that the Government should instead direct itself to responding to petitioner's contentions if it opposes the instant application for writ of certiorari, or to concede their validity and applicability otherwise. Form should not be allowed to prevail over substance, and the Government should not be heard to urge that the failure of petitioner's trial counsel to make a patently futile motion should deny him appropriate relief.

Accordingly, it is again urged that the within petition for writ of certiorari be granted and that a rehearing be allowed herein.

Respectfully submitted,
HOWARD E. BECKLER
Attorney for Petitioner

## III

## Certificate of Counsel

Howard E. Beckler hereby certifies:

That he is counsel for petitioner herein;

That rehearing is herewith sought on the grounds set forth hereinabove under heading "Reaons for Rehearing" and in the "Response to Government's Opposition Memorandum" following; and

That this petition for rehearing is presented in good faith and not for delay.

Respectfully presented,

HOWARD E. BECKLER